

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY 04-50710

Anne and Kenneth Niven,

Debtors.

**NOTICE OF HEARING AND
OBJECTION TO CLAIMED
EXEMPT PROPERTY**

1. John A. Hedback, the duly appointed trustee for the bankruptcy estate in the above-referenced bankruptcy case hereby gives notice of his objection to claimed exempt property and provides notice of hearing herewith.

2. The Court will hear this objection on October 25, 2004, at 10:30 a.m., or as soon thereafter as counsel can be heard in Courtroom 2, U.S. Bankruptcy Court, 515 West 1st Street, Duluth, Minnesota.

3. Any responses to this objection shall be filed and delivered no later than October 20, 2004, at 10:30 a.m. which is three (3) business days prior to the hearing, or mailed no later than October 14, 2004, which is seven (7) days prior to the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion under Sections 175 and 1334 of Title 28 of the United States Code. This motion is brought pursuant to Section 522 of the Bankruptcy Code and local Rule 4003-1. This is a core proceeding.

5. The Debtor(s), in Schedule C, claimed as exempt the following property:

Checking account of \$100.00; 1997 ATV Polaris two wheel drive 325cc valued at \$300.00; two IRA totaling \$4,716.00; Debtor Kenneth Niven's interest in KSG Consulting LLC valued at \$9,000; estimated 2004 tax refunds of \$1,000; and an interest in a 1997 Honda Accord valued at \$3,000 with no encumbrances.

6. Debtors claimed all of the assets (the Accord to the extent of \$100) exempt under 11 U.S.C. Section 522(d)(5). That exemption protects property up to the extent of \$10,225 per person. Debtors have provided documentation indicating that Debtors deposits on the date of the filing of the bankruptcy were actually \$1,304.74, that Kenneth Nevin's IRA has a value of \$2,328.56, and that the Accord is titled in Kenneth Nevin's name. Based on this information the value of Kenneth Nevin's assets claimed exempt under (d)(5) is \$12,730.93. Therefore, a portion of these assets can not be claimed exempt under that statute.

WHEREFORE, the trustee requests an order:

- (A) Sustaining the trustee's objections to the Debtor's claimed exemption of the Property; and
- (B) Granting any other relief the Court deems just and proper.

Dated: September 1, 2004

_____/s/ John A. Hedback_____
John A. Hedback, Atty #142438
Trustee
2855 Anthony Lane South, Suite 201
St. Anthony, MN 55418
(612) 436-3280

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY 04-50710

Anne and Kenneth Niven,

Debtor(s).

UNSWORN DECLARATION FOR PROOF OF SERVICE

The undersigned, being an employee of Hedback, Arendt & Carlson, PLLC, attorneys licensed to practice law in this Court, with offices located at Suite 201 Anthony Place, 2855 Anthony Lane South, St. Anthony, Minnesota, declares that on the date indicated below, I served the following:

1. Notice of Hearing and Objection to Claimed Exempt Property;
2. Proposed Order; and
3. Unsworn Declaration for Proof of Service

upon each of the entities named below by mail (unless otherwise indicated below) by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid, and depositing same in the post office at St. Anthony, Minnesota, addressed to each of them as follows:

Kenneth and Anne Niven
1831 Melrose Avenue
Duluth, MN 55803

Walter W. Vasil
200 Board of Trade Building
Duluth, MN 55802

Office of United States Trustee
1015 US Courthouse
300 South Fourth Street
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: September 1, 2004

_____/e/ John A. Hedback_____

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY 04-50710

Anne and Kenneth Niven,

ORDER

Debtor.

This bankruptcy case came before the Court on objection by the Trustee to certain claim(s) of exempt property by the Debtor(s). Appearances were noted on the record. Based on the objection, argument of counsel and the files, records and proceedings herein,

IT IS HEREBY ORDERED: that the Trustee's Objection to Claimed Exempt Property is sustained. Debtor Kenneth Nevin's interest in the following property is not exempt:

Checking account of \$1,304.74; 1997 ATV Polaris two wheel drive 325cc; IRA totaling \$2,328.56; Debtor Kenneth Niven's interest in KSG Consulting LLC valued at \$9,000; 2004 tax refunds; and a 1997 Honda Accord to the extent of \$100.00

BY THE COURT

Dated: _____

U.S. Bankruptcy Judge